

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Paul's Mobile Fleet Service)
Map No. 126I, Group A, Control Map 126I,) Robertson County
Parcel 32.00P)
Tax year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The Robertson County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$14,351	\$4,305

On June 23, 2007, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, this assessment was not ¹ appealed to the Robertson County Board of Equalization ("county board") during its regular annual session for tax year 2006.

The undersigned administrative judge conducted a hearing of this matter on September 13, 2007 in Nashville.¹ In attendance at the hearing was the appellant, Paul Gauthier. The case was set for 1:00 p.m. when the County had not appeared by 1:10 p.m. the Robertson County Assessor's Office was contacted by Ms. Hennessee of the State Board of Equalization. Ms. Hennessee was informed that Robertson County did not intend to appear. This was the first time the administrative judge learned that the County did not intend to participate in the appeal process.

Findings of Fact and Conclusions of Law

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b) (2); 67-5-1412 (e). Nevertheless, the legislature has also provided that: the taxpayer shall have a right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating

¹ Notice of the hearing was entered on August 14, 2007. While this was a Robertson County case, the hearing was held in Davidson County for the sake of time. The taxpayer is set to go to Iraqi on September 24, 2007.

such **reasonable cause**, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control**. (*Emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovetz*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Robertson County Board of Equalization. It is the taxpayer's burden to prove that they are entitled to the requested relief.

In this case, the taxpayer, Mr. Gauthier did not appeal to the Robertson County Board of Equalization in a timely fashion because, according to his unchallenged testimony, the County gave him the wrong information when he called to protest the assessment. As previously noted there was no one from the County Assessor's Office present to counter or substantiate the taxpayers' version of events.

Mr. Gauthier formerly owned a mobile fleet service when he lived in Minneapolis, he moved to Sumner County in 2005 to pursue a teaching career at the Nashville Auto Diesel College he testified that he has never had an operating business in Sumner nor Robertson County, but he did store some of his equipment in Sumner County. Mr. Gauthier further testified that he has subsequently sold everything associated with the business except some of the hand tools that he uses when he changes the oil in his personal vehicles.

In 2006 the property owner did not file a tangible personal property schedule, (Tenn. Code Ann. § 67-5-903) by the March 1st statutory deadline because the business was not in existence. As a result, the Assessor levied a "forced assessment" on the "business" in the amount shown above. Routinely, the assessment includes a statement of the taxpayer's right of appeal to the county board and specified the last day on which such an appeal would be accepted. The notice usually also advises that **"Failure to appeal the classification and/or assessment to the (county board) may result in the assessment becoming final without further right of appeal."**²

² Since the Robertson County Assessor's Office failed to appear or submit any documents, the only proof submitted was the sworn testimony of the taxpayer who stated he was not told the date of the County Board meetings but he testified that he did tell the person he talked to that there was NO BUSINESS in operation.

A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and (if necessary) state boards of equalization; however, "such remedy shall be conditioned upon the filing with **the board of equalization** a complete listing or schedule of all the tangible personal property owned or used by the taxpayer in the operation of the taxpayer's business on the same form as required to be filed with the assessor."

[Emphasis added.] Further, Tenn. Code Ann. § 67-5-1412(b) (1) provides that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508. [Emphasis added.]

In 1991, the General Assembly amended Tenn. Code Ann. § 67-5-1412(e) by adding the following language:

The taxpayer or owner shall have the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the (State Board) shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

The Tennessee Attorney General has opined that:

The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a **jurisdictional prerequisite** which cannot be waived by the consent of the parties. [Emphasis added.] Tenn. Atty. Gen. Op. 92-62, p. 10.

In this case, the taxpayer did in fact file the required schedule which showed no property in Robertson County. There is no question that the appellant was duly notified of the disputed assessment; a copy of the front side of the notice is attached to the appeal. Mr. Gauthier stated that once he was notified of the erroneous assessment he let the County Assessor's Office know that there was "no business". He went on to state that he told them that when the business was registered it was in Sumner not Robertson County. He asked the County Office what further steps he needed to take, he was told to read the back of the card and follow the directions to appeal, he subsequently appealed to the State Board of Equalization. In the opinion of the Administrative Judge the taxpayer has demonstrated that there is reasonable cause to excuse his failure to go to the County Board.

Additionally, it has been sufficiently demonstrated that he owns a home in Robertson County but not a business.³

³ The schedule that was filed and is a part of the taxpayers' record shows there are no 'items' (tools, trucks, or equipment) owned or held for use in Robertson County.

Respectfully, based on the evidence in the record, the administrative judge finds that the taxpayer has carried his burden to prove he is entitled to the relief he is requesting⁴ and that the forced assessment should be dismissed.

Order

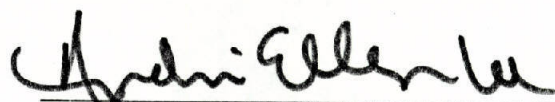
It is, therefore, ORDERED that this forced assessment is dismissed as there is no tangible personal property in Robertson County.⁵

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 19th day of September, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Paul Gauthier, d/b/a Paul's Mobile Fleet Service
F.E. Head, Robertson County Assessor of Property

⁴ In the hearing of an appeal concerning the assessment of property, the party seeking to change the current assessment shall have the burden of proof. Contested Case Procedures, Rules of the State Board of Equalization, Rule 0600-1-.11(1).

⁵ Robertson County Acting Property Assessor, Mr. Traughber, has subsequently determined that there is in fact no business and no tangible personal property used or held for use in Robertson County.